MT LEGISLATIVE HISTORY

Chapter 328 1971

Bill (H) 190 S _____ Original bill & hist. ___C

H. Committee on Judiciary S. Committee on Judiciary

Hearing Date(s)			Hearing Date(s)	
	Jan 25	✓C	Feb 13	✓C
	_____	___C	Feb 15	✓C
	_____	___C	Feb 16	✓C
	_____	___C	_____	___C
Date Out	Jan 25	✓C	Feb 15	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

January 25, 1971

JUDICIARY COMMITTEE

The meeting was called to order in room 300 of the Capitol Building on Monday, January 25, 1971 with Chairman Jeffrey J. Scott presiding. All members were present except Mr. Warfield.

HOUSE BILL 193 — There was no chief sponsor present nor any proponents or opponents.

Executive Session: — Representative Hall moved that House Bill 193 DO NOT PASS. Motion carried.

HOUSE BILL 269 — Representative Knudsen, chief sponsor of this bill, introduced Mr. John Cadby of the Montana Auto Dealers Association who explained the contents of this bill. This would provide that an agisters' lien for repair of motor vehicles shall not take precedence over other recorded liens unless thirty days notice be given the secured party, instead of 10 days. Mr. George Vucanovich from Anderson Motors and Mr. George Larson from Dodge City, Helena, gave testimony in support of these bills. Ralph Anderson from Capitol Motors, Inc. also gave a statement in support. Questions were asked and the witnesses were excused.

Executive Session: — Mr. Towe moved that House Bill 269 DO NOT PASS. Discussion followed. Motion carried.

HOUSE BILL 190 — Representative Haines introduced Jerome Loendorf representing the Montana Medical Association, who gave a summary of this bill, which would provide for a statutue of limitations in mal practice cases. Dr. McMahon, Representative Olson and Representative Norman also gave statements in support of this bill. Questions were asked of the witnesses and they were excused.

Executive Session: — Mr. McNamer introduced a letter from John Moore, opposing this bill (See Exhibit A) Mr. Murphy made a motion that House Bill 190 do pass. Mr. Hall made a substitute motion that House Bill 190 do not pass. Mr. Greely made a substitute motion to strike on line 20 after the word "or" the material "one (1)" and insert in lieu thereof the material "two (2)" and further amend on line 24 after the word "after" by striking the material "three (3)" and inserting in lieu thereof the material "five (5)". Motion to amend passed. A vote was taken on the substitute motion of Mr. Hall's that the bill do not pass. Motion failed. Vote was taken on the motion DO PASS AS AMENDED. Motion carried.

Exhibit A

FRISBEE & MOORE
ATTORNEYS AT LAW
13 EAST MAIN - WILKINS BLDG.
CUT BANK, MONTANA 59427

SELDEN B. FRISBEE
JOHN P. MOORE
J. ALLEN BRADSHAW

TELEPHONE NO. 338-2283

January 20,1971'

Percy DeWolfe
Browning, Montana

Hugh McNamer
Cut Bank, Montana, and

George Johnston
Cut Bank, Montana

Re: House Bill No. 190
A BILL FOR AN ACT ENTITLED: "AN ACT TO PRESCRIBE THE PERIOD OF LIMITATIONS IN WHICH ACTIONS FOR PROFESSIONAL NEGLIGENCE CAN BE COMMENCED'

Dear Percy, Hugh and George:

I am writing to all of you jointly about a Bill which would eliminate any possible recovery against a thoughtless, careless doctor after a period of three years for any wrongful acts which he committed in taking care of a patient.

The bad part of this Bill is that it does not take into consideration the fact that often times defects are not discovered within the three year period and the patient would have no recovery therefor at all, for example if the patient had to go back to the hospital five years later to have some piece of surgical equipment removed from the patient's stomach if it was left in there by a careless physician.

As the law now stands, the limitation period runs from date of time within which the defect should have been discovered or actually was discovered. This is a fair law as it gives the injured person the opportunity within a given period to bring in an action or to forget it and to lose his rights. As the law now stands, it does not shield the careless doctor with an arbitrary limitation period which might expire before reasonable discovery could be made.

As our law in Montana stands, it is now in line with the majority law in the other states here in the Union and I do believe that a change in this law would be a definite deficit for the public's interest.

The Medical Profession carries adequate malpractice insurance to cover such matters as this and the general public should not be left holding the bag.

If you disagree with the views expressed herein, I would certainly like to hear from you on it.

With best personal regards, I am

Respectfully yours,

FRISBEE & MOORE

BY Jack

JPM:svt

Name: Senator McMahon, M.D. Bill No. S.

Whom do you represent? Montana Medical Association

Amend?..... Oppose?..... Support? X

Please leave prepared statement with secretary.

Name: James T. Tredway Bill No. 194
217
330

Whom do you represent? MT Medical Assn.

Amend?..... Oppose?..... Support?.....

Please leave prepared statement with secretary.

HB-190
HB-219

Name: [illegible] Bill No. HB 330

Whom do you represent? Western Wheat Assn.

Amend?..... Oppose?..... Support?..✓..: HB 3

Please leave prepared statement with secretary.

Name _____ Bill No. _____

Whom do you represent? _____

Amend?..... Oppose?..... Support?.....

Please leave prepared statement with secretary.

SENATE JUDICIARY COMMITTEE MEETING--February 13 ON ADJ.

The meeting was called to order by the Chairman, Senator Gilfeather. The members were present with the exception of Senators Stephens and Turnage.

Some consideration was given to House Bill 7 and Senator Moore MOVED THAT HOUSE BILL 7 BE CONCURRED IN. This was SECONDED BY Senator Sheehy.

House Bill 190 was brought to the attention of the committee and Mr. Jerome Loendorf, representing the Montana Medical Association, spoke in favor of this bill, as did Mr. Chad Smith, representing also the Montana Hospital Association. Other proponents of this bill were:
Mr. L. R. Hegland - - Montana Medical Association
Mr. Roland Fisher - - Montana Hospital Association
Dr. H. T. Caraway, M.D., - Mont. Medical Association
Mr. William Leary - - Montana Hospital Association
G. Lester Estes - - - Montana Medical Association

Mr. Hegland spoke favoring this bill.

The Chairman asked if any questions from the committee. There were from Senators Sheehy, Shea,Moore, Vainio and Chairman Gilfeather. These were answered by Mr. Loendorf and Dr. Caraway, who at this time spoke at some length in favor of this bill.

House Bill 199 was considered and Mr. Loendorf explained this bill. Mr. Chad Smith spoke in favor of this bill. There were questions and discussions by Senators Shea and Sheehy.

An opponent of this bill, Mr. Bell, spoke against it, at some length. Senator Gilfeather asked if any further testimony and there was none. There were questions by Senators Shea and Hafferman,and Chairman Gilfeather asked at this point if there were any further questions. There were none so the Chairman allowed time for rebuttal. Mr. Loendorf spoke in this rebuttal time. Mr. Bell, who was representing Mr. William L. Romine, a Helena attorney, again spoke in opposition to this bill. The Chairman asked if any further questions or remarks, and there were none. The visitors left, as they were excused by the Chairman.

The committee and Chris McEwan were present as they discussed House Bill 12. After a discussion as to amending this bill, it was decided to hold it for the present time.

SENATE JUDICIARY COMMITTEE MEETING--February 15, 1971

The meeting was called to order by the Chairman, Senator Gilfeather. The members were present with the exception of Senators Shea and Vainio.

House Bill 422 was considered by the committee. The Chairman introduced Mr. Al Daugherty, a Helena attorney, who spoke in favor of this bill. Mr. Daugherty introduced Mr. Hank Sexton of the Montana Cable Television Association and Mr. Don Johnson of Helena Cable TV who spoke in favor of this bill. At the conclusion there were no questions and the Chairman thanked them for coming and excused them.

House Bill 35 was considered and Representative Tom Harrison spoke in favor of this bill, at the conclusion of which he asked if there were any questions and he would try to answer them. Senator Gilfeather had a question and the Representative answered it. He then left the meeting.

Senator Turnage MOVED THAT HOUSE BILL 35 BE CONCURRED IN. This was SECONDED BY Senator Moore.

Concerning HOUSE BILL 422, Senator Hafferman MOVED THAT 422 BE CONCURRED IN. THIS WAS SECONDED BY Senator Turnage.

The secretary was instructed to notify Representatives Christiansen and Selstad for the hearing of House Bill 118 for February 19.

Senator Sheehy moved, seconded by Senator Turnage, that action on House Bill 150 be held up and that it be reconsidered, together with HB-151 and HB-152.
The Chairman asked Senator Turnage to contact Representative Mather on this.

House Bill 180 was considered and Senator Sheehy MOVED TO AMEND the title on page 1, line 9 by omitting the punctuation and language following the word "TREASURER" and inserting in lieu thereof a period ".".
Senator Sheehy then MOVED THAT HOUSE BILL 180, AS AMENDED, BE CONCURRED IN. This was SECONDED by Senator Turnage.

Senator Gilfeather set House Bill 188 for February 17. House Bill 190 was brought to the attention of the committee and possible amendments were suggested, but it was decided to HOLD THIS BILL FOR THE PRESENT.

There was some more discussion on House Bill 190. Senator Gilfeather gave the Chair over to Senator Stephens. Senator Turnage MOVED THAT HOUSE BILL 190, as amended, do be concurred in. The amendment was: Amend Section 1, page 1, line 21, after the word "or" by omitting the word and numeral "two (2)" and inserting in lieu thereof the word and numeral "three (3)". A ROLL CALL VOTE was taken and it resulted in a tie. Acting Chairman Stephens broke the tie with his vote, which resulted in the HOUSE BILL AS SO AMENDED, BEING CONCURRED IN. The MOTION WAS CARRIED.

The meeting was adjourned.

SENATOR P. J. GILFEATHER, CHAIRMAN

SENATE JUDICIARY COMMITTEE MEETING---February 16, 1971

ON ADJOURNMENT

The meeting was called to order by the Chairman, Senator Gilfeather.

House Bill 497 was considered and Representative Towe explained this bill. He then introduced Judge Robert Wilson who explained the bill further. Mr. John Thomas of the Department of Institutions told of a group family home which is being operated here in Helena and explained how much better it is than an institution for the young people whom it houses. There were questions from the committee and they were answered chiefly by Mr. Thomas. Mr. Towe also spoke again, supporting this bill.

After consideration by the committee Senator Turnage MOVED THAT HOUSE BILL 497 BE CONCURRED IN AS AMENDED.
The amendments are as follows:
On page 2, line 26, following the word and punctuation "Homes," by insertinng the words "and is authorized to expend";

Further amend on page 2, line 27, following the word "appropriated" by inserting the words "or available";

Further amend the title in line 10 by omitting the comma "," and words "AND PROVIDING AN EFFECTIVE DATE."

Further amend Section 11, page 4, lines 7 and 8 by omitting the words "any and all";

Further amend Section 13, page 4, lines 18 and 19 by omitting it in its entirety.

MOTION WAS MADE TO ADOPT THE AMENDMENTS, by Senator Turnage, SECONDED by Senator Moore. Senator Turnage MOVED THAT HOUSE BILL 497, AS AMENDED, BY CONCURRED IN. THIS WAS SECONDED BY Senator Sheehy. The motion was carried.

Regarding HOUSE BILL 190, discussion was had by the committee as to other amendments to this bill. It was decided, however, that HOUSE BILL 190, as previously amended, be concurred in. This motion was by Senator Sheehy and was seconded by Senator Gilfeather.

The meeting was adjourned, there being no further business.

SENATOR P. J. GILFEATHER, CHAIRMAN

Payment of tax—1.725%.

shall accompany such statement with the payment to the state board of equalization of a license tax in the amount equal to one and *seven hundred twenty-five thousandths* percent *(1.725%).*"

Effective April 1, 1971.

Section 3. This act is effective on April 1, 1971.

Approved March 15, 1971.

CHAPTER NO. 327

An Act to Amend Section 75-6107, R.C.M. 1947, Providing for Timely Hearing Upon Appeal.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. Section 75-6107, R.C.M. 1947, is amended to read as follows:

Trustees may dismiss teacher for cause.

Appeal within 10 days.

Hearing.

Determination by county superintendent.

"75-6107. **Dismissal of teacher under contract.** The trustees of any district may dismiss a teacher before the expiration of his employment contract for immorality, unfitness, incompetence, or violation of the adopted policies of such trustees. Any teacher who has been dismissed may *in writing within ten (10) days* appeal such dismissal to the county superintendent; *following such appeal a hearing shall be held within ten (10) days.* If the county superintendent, after a hearing, determines that the dismissal by the trustees was made without good cause, he shall order the trustees to reinstate such teacher and to compensate such teacher at his contract amount for the time lost during the pending of the appeal."

Approved March 15, 1971.

CHAPTER NO. 328

An Act to Prescribe the Period of Limitations in Which Actions for Professional Negligence can be Commenced.

Be it enacted by the Legislative Assembly of the State of Montana:

Limitations on actions for malpractice—three years.

Section 1. Action for injury or death against a physician or surgeon, dentist, registered nurse, dispensing

optician, optometrist, licensed physical therapist, podiatrist, psychologist, osteopath, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, pharmacist, veterinarian, or a licensed hospital as the employer of any such person, based upon such person's alleged professional negligence, or for rendering professional services without consent, or for error or omission in such person's practice, shall be commenced within three (3) years after the date of injury or three (3) years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the injury whichever occurs last, but in no case may such action be commenced after five (5) years from the date of injury. However, this time limitation shall be tolled for any period during which such person has failed to disclose any act, error, or omission upon which such action is based and which is known to him, or through the use of reasonable diligence subsequent to said act, error or omission would have been known to him.

Maximum—five years.

Tolled during failure to disclose.

Approved March 15, 1971.

CHAPTER NO. 329

An Act to Provide for Removal of Elective Officers of Cities and Towns Under a Mayor-Council Form of Government.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. (1) The holder of any elective office under a mayor-council form of municipal government may be removed at any time by the electors qualified to vote. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by twenty-five percent (25%) of all qualified electors registered for the last preceding general municipal election, demanding an election for recall of the person sought to be recalled, shall be filed with the city clerk, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of such paper shall make oath before an officer com-

Procedure—removal of elective officer under mayor—council government.

Petition—25% of electors.

Filing with city clerk.

Signatures.

Oath.